

2005 DRAFTING REQUEST

Bill

Received: **09/09/2005**

Received By: **agary**

Wanted: **Soon**

Identical to LRB:

For: **Steve Wieckert (608) 266-3070**

By/Representing: **Scott Becher (aide)**

This file may be shown to any legislator: **NO**

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Transportation - traffic laws**

Extra Copies: **PJH**

Submit via email: **YES**

Requester's email: **Rep.Wieckert@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Owner liability for failure to stop and render assistance at the scene of an accident (hit and run)

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			S&L
/P1	agary 09/19/2005	kfollett 09/29/2005	rschluet 09/30/2005	_____	sbasford 09/30/2005		S&L
/1	agary 12/13/2005	kfollett 12/13/2005	rschluet 12/13/2005	_____	sbasford 12/13/2005	sbasford 12/21/2005	S&L
	agary 01/05/2006	kfollett 01/05/2006		_____			

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/2			pgreensl	_____	sbasford	sbasford	
			01/05/2006	_____	01/06/2006	01/06/2006	

FE Sent For: 12/13/2005, 12/13/2005, 12/13/2005, 12/13/2005.

<END>

old version

4/2" 1/9/06

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FE Sent For: **12/13/2005, 12/13/2005, 12/13/2005, 12/13/2005**

→ ("1") 12/15/05 kjf pb

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12-13-2005
(11/11)

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PA's
send out
for FE on "1"
requested
by Scott

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/?	agary	1/Pl/gf 9/29					S&L

FE Sent For:

<END>

12/13

Plr w / Scott Butler

3631 → h / 1

wanted Today if possible

Gary, Aaron

From: Gary, Aaron
Sent: Friday, September 09, 2005 3:46 PM
To: Becher, Scott
Subject: Hit and run offenses

Scott,

The offense of hit-and-run is a violation of a vehicle operator's duty to stop and render assistance at the scene of an accident. See s. 346.67. As discussed, the duty runs to the operator of the vehicle, not the vehicle owner. The penalty for hit-and-run ranges from a misdemeanor with a fine of \$300 to \$1,000 and/or jail of 0 to 6 mos. plus license revocation if no injury or death occurs up to a felony with a \$0 to \$10,000 fine and/or 0 to 7.5 yrs in prison plus license revocation if a person is killed. See s. 346.74.

As discussed, the problem seems to be that the hit-and-run offense is committed by the vehicle operator, whereas a witness probably cannot identify the vehicle operator but might obtain the license plate number and be able to thereby identify the vehicle used in the hit-and-run offense - the license plate number can establish the owner of the vehicle used in the offense but not the operator (the owner may not have been driving at the time).

As discussed, hit-and-run violations are punishable by pretty severe criminal penalties. To require a person suspected of a hit-and-run offense to admit that he or she was driving a vehicle identified as the vehicle used in the hit-and-run would clearly violate the constitutional right under the 5th amendment against self-incrimination.

To get around this problem in similar circumstances, statutes have been created providing for civil penalties against the owner of a vehicle used in certain types of traffic offenses. Current law imposes owner liability on a vehicle owner if his or her car is used to illegally pass a fire truck or school bus, flee a traffic officer, fail to yield to an authorized emergency vehicle, or illegally cross a railroad track. See, for example, ss. 346.175, 346.195, 346.452, 346.457, 346.465, 346.485. The common thread of these statutes is, like hit-and-run, it is likely that somebody will see the violation and can record the license plate number of the vehicle but that the violator will be gone without the opportunity to identify the operator of the vehicle used to commit the violation. These owner liability provisions impose substantial civil liability on the owner of a vehicle used to commit one of these offenses, but give the owner a defense to liability if the owner identifies the actual driver of the vehicle at the time the offense was committed.

As I understand the problem you are trying to address, it seems that a civil owner liability provision for hit-and-run offenses with substantial penalties and with a defense for the owner who identifies the driver of the vehicle at the time of the offense would offer a practical solution and be consistent with other owner liability provisions in the statutes. Let me know if you need anything drafted.

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

9/9/05

~~AB 365~~

file from Scott Becher 6-3070

- Steve Wierent
- constituent :

- c/1 : hit and run
 - hit and run drivers to admit what happened

- Reed -
- Carry Potter - Appleton Police Dept.

- eluding 346.04 - 346.67 or 346.68

- same problem w/ hit-and-run

- owner -

- ~~preliminary~~ draft -

- McCormick may have drafted

- Scott wants a "/PI" draft

reid. Holdorf@appleton.org / 920-832-5500

*in 9/19**10/3**soon*

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

*D-Note**Gen*

- 1 **AN ACT ...; relating to:** vehicle owner liability for violations arising from the
- 2 failure to stop at the scene of an accident and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law imposes, with exceptions, liability on the owner of a vehicle that is observed violating certain traffic laws, including: fleeing a traffic officer; illegally passing a school bus or fire truck; illegally crossing a railroad crossing or controlled school crossing; and failing to yield the right-of-way to an emergency vehicle or a funeral procession. The owner of a vehicle used to commit these traffic violations is subject to specified penalties, but the owner's motor vehicle operating privilege may not be revoked or suspended and no demerit points may be assessed against the owner's driving record. The vehicle owner may assert certain defenses to owner liability.

Also under current law, if a vehicle operator has an accident resulting in personal injury or vehicle damage, the vehicle operator must immediately stop the vehicle at or near the scene of the accident, provide certain information, and render reasonable assistance to any injured person. If a vehicle operator has an accident with an unattended vehicle or with property on or adjacent to a highway, the vehicle operator must immediately stop and fulfill certain obligations to provide notice of the vehicle operator's identity. The penalty for a failure-to-stop violation involving an unattended vehicle or property other than a vehicle is a forfeiture of not more than \$200, and the penalty for other failure-to-stop violations ranges from a fine of not less than \$300 nor more than \$1,000 or imprisonment for not more than six months or both if no personal injury occurs to a fine of not more than \$100,000 or

imprisonment for not more than 25 years or both if the accident involves the death of a person.

This bill imposes liability upon the owner of a vehicle operated in the commission of a failure-to-stop violation. Any person who observes a failure-to-stop violation may, within 24 hours after observing the violation, report the violation to a traffic officer of the county or municipality in which the violation occurred. If the report contains specified information, the traffic officer may, within 72 hours after receiving the report, investigate the violation and, after verifying certain information and determining that there is probable cause to believe that a failure-to-stop violation has occurred, prepare a uniform traffic citation and serve it upon the owner of the vehicle being operated in the commission of the failure-to-stop violation. The owner is liable for the failure-to-stop violation, subject to certain limited defenses. Although an owner may not assert as a defense that the owner was not operating the vehicle at the time of the failure-to-stop violation, the owner has a defense to liability if the vehicle had been stolen at the time of the violation or if the owner provides the traffic officer with the name and address of the person who was operating the vehicle at the time of the violation and that person admits operating the vehicle at the time of the violation. Lessors and dealers of vehicles may assert similar types of defenses. The owner also may not be liable if the vehicle operator has been convicted of the failure-to-stop violation. If an owner is liable for a failure-to-stop violation involving an unattended vehicle or damage to property other than a vehicle, the owner is subject to a forfeiture of not more than \$100. If an owner is liable for any other failure-to-stop violation, the owner is subject to a forfeiture of not more than \$1,000. The owner's operating privilege may not be suspended or revoked and no demerit points may be recorded against the owner's driving record.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 346.01 (2) of the statutes is amended to read:

2 346.01 (2) In this chapter, notwithstanding s. 340.01 (42), "owner" means, with
3 respect to a vehicle that is registered, or is required to be registered, by a lessee of
4 the vehicle under ch. 341, the lessee of the vehicle for purposes of vehicle owner
5 liability under ss. 346.175, 346.195, 346.205, 346.452, 346.457, 346.465, 346.485,
6 346.505 (3), 346.675, and 346.945.

History: 1997 a. 27; 2003 a. 209.

7 **SECTION 2.** 346.675 of the statutes is created to read:

1 **346.675 Vehicle owner's liability for failing to stop at the scene of an**
2 **accident.** (1) Subject to s. 346.01 (2), the owner of a vehicle operated in the
3 commission of a violation of s. 346.67 (1), 346.68, or 346.69 shall be liable for the
4 violation as provided in this section.

5 (2) Any person who observes a violation of s. 346.67 (1), 346.68, or 346.69 may,
6 within 24 hours after observing the violation, report the violation to a traffic officer
7 of the county or municipality in which the violation occurred. If possible, the report
8 shall contain the following information:

9 (a) A description of the violation alleged.

10 (b) The time and the approximate location at which the violation occurred.

11 (c) The vehicle registration number and color of all vehicles involved in the
12 violation.

13 (d) Identification of each vehicle involved in the violation as an automobile,
14 station wagon, motor truck, motor bus, motorcycle, or other type of vehicle.

15 (e) If the violation included damage to property other than a vehicle, a
16 description of such property.

17 (3) (a) Within 72 hours after receiving a report containing all of the information
18 in sub. (2), the traffic officer may investigate the violation and, after verifying the
19 information provided under sub. (2) (c) to (e) and determining that there is probable
20 cause to believe that a violation of s. 346.67 (1), 346.68, or 346.69 has occurred, may
21 prepare a uniform traffic citation under s. 345.11 and personally serve it upon the
22 owner of the vehicle being operated in the commission of the violation of s. 346.67 (1),
23 346.68, or 346.69.

24 (b) If with reasonable diligence the owner specified in par. (a) cannot be served
25 under par. (a), service may be made by leaving a copy of the citation at the owner's

1 usual place of abode within this state in the presence of a competent member of the
2 family at least 14 years of age, who shall be informed of the contents thereof.

3 (c) If with reasonable diligence the owner specified in par. (a) cannot be served
4 under par. (a) or (b) or if the owner specified in par. (a) lives outside of the jurisdiction
5 of the issuing authority, service may be made by certified mail addressed to the
6 owner's last-known address.

7 (4) (a) Except as provided in par. (b), it shall be no defense to a violation of this
8 section that the owner was not operating the vehicle at the time of the violation.

9 (b) The following are defenses to a violation of this section:

10 1. That a report that the vehicle was stolen was given to a traffic officer before
11 the violation occurred or within a reasonable time after the violation occurred.

12 2. If the owner of the vehicle, including a lessee specified in subd. 3., or a person
13 on a trial run specified in subd. 4. provides a traffic officer with the name and address
14 of the person operating the vehicle at the time of the violation and the person so
15 named admits operating the vehicle at the time of the violation, then the person
16 operating the vehicle shall be charged under s. 346.67 (1), 346.68, or 346.69 and the
17 owner, including a lessee, or person on a trial run shall not be charged under this
18 section.

19 3. Subject to subd. 2., if the vehicle is owned by a lessor of vehicles and at the
20 time of the violation the vehicle was in the possession of a lessee, and the lessor
21 provides a traffic officer with the information required under s. 343.46 (3), then the
22 lessee and not the lessor shall be charged under this section.

23 4. Subject to subd. 2., if the vehicle is owned by a dealer as defined in s. 340.01
24 (11) (intro.) but including the persons specified in s. 340.01 (11) (a) to (d), and at the
25 time of the violation the vehicle was being operated by any person on a trial run, and

1 if the dealer provides a traffic officer with the name, address, and operator's license
2 number of the person authorized to operate the vehicle on the trial run, then this
3 person, and not the dealer, shall be charged under this section.

4 5. That another person has been convicted under s. 346.67 (1), 346.68, or 346.69
5 for the violation of s. 346.67 (1), 346.68, or 346.69 specified in sub. (1).

6 **SECTION 3.** 346.74 (6) of the statutes is created to read:

7 346.74 (6) (a) A vehicle owner or other person found liable under s. 346.675
8 with respect to a violation of s. 346.67 (1) may be required to forfeit not more than
9 \$1,000.

10 (b) A vehicle owner or other person found liable under s. 346.675 with respect
11 to a violation of s. 346.68 or 346.69 may be required to forfeit not more than \$100.

12 (c) Imposition of liability under s. 346.675 shall not result in suspension or
13 revocation of a person's operating privilege under s. 343.30 or 343.31, nor shall it
14 result in demerit points being recorded on a person's driving record under s. 343.32
15 (2) (a).

16 (END)

D-Note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3631/P1dn

ARG: *kjf*

Date

ATTN: Scott Becher

Please review the attached draft carefully to ensure that it is consistent with your intent.

Existing owner liability provisions are very restrictive in who has authority to report a violation that may result in owner liability. Depending on the type of violation, those who may report the violation giving rise to owner liability are generally limited to persons in a special role with respect to the violation. For example, owner liability for fleeing a traffic officer may only be based upon the report of a traffic officer (s. 346.175 (2) and (3)), owner liability for failing to yield to an authorized emergency vehicle may only be based upon the report of an authorized emergency vehicle driver (s. 346.195 (2)), owner liability for railroad crossing violations may only be based upon the report of railroad employees (s. 346.452 (2)), owner liability for illegally passing a fire truck may only be based upon the report of the fire department (s. 346.457 (2)), owner liability for school crossing violations may only be based upon the report of a school crossing guard (s. 346.465 (2)), and owner liability for illegally passing a school bus may only be based upon the report of a school bus driver (s. 346.485 (2)). None of these provisions is so expansive as to potentially impose owner liability based upon the report of any citizen. With respect to the attached draft, there is no obvious person in a special relationship vis-a-vis the violation to identify as the person who must report the violation in order for owner liability to arise, except perhaps the person injured or the person who owns injured property, but this would be a very restrictive provision given the nature of hit-and-run offenses. The attached draft does include a requirement that the traffic officer make a probable cause determination before issuing the citation, which is intended to mitigate to some extent the broad scope of who may report the violation.

The provisions of this draft are intended to parallel, with some modifications, similar existing statutes, mostly ss. 346.175 (owner liability for fleeing a traffic officer) and 346.452 (owner liability for railroad crossing violations, created in 2003 Act 209). The penalties for owner liability in created s. 346.74 (6) were prepared with the assumption that in all circumstances the penalty for the owner should be less than the penalty for the operator under s. 346.74 (3) and (5). I note that 2003 AB-928 relates to owner liability for hit-and-run offenses. The attached draft is neither identical to, nor based upon, 2003 AB-928. Please advise if 2003 AB-928 is closer to your intent.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

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LRB-3631/P1dn

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State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-3631/1

ARG:kjfs

in 12/13

TODAY
if possible

Rm

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

No changes

Regen

- 1 AN ACT ~~to amend~~ 346.01 (2); and ~~to create~~ 346.675 and 346.74 (6) of the statutes;
- 2 relating to: vehicle owner liability for violations arising from the failure to stop
- 3 at the scene of an accident and providing a penalty.

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or both if no personal injury occurs to a fine of not more than \$100,000 or imprisonment for not more than 25 years or both if the accident involves the death of a person.

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9 shall contain the following information:

10 (a) A description of the violation alleged.

11 (b) The time and the approximate location at which the violation occurred.

12 (c) The vehicle registration number and color of all vehicles involved in the
13 violation.

14 (d) Identification of each vehicle involved in the violation as an automobile,
15 station wagon, motor truck, motor bus, motorcycle, or other type of vehicle.

16 (e) If the violation included damage to property other than a vehicle, a
17 description of such property.

18 (3) (a) Within 72 hours after receiving a report containing all of the information
19 in sub. (2), the traffic officer may investigate the violation and, after verifying the
20 information provided under sub. (2) (c) to (e) and determining that there is probable
21 cause to believe that a violation of s. 346.67 (1), 346.68, or 346.69 has occurred, may
22 prepare a uniform traffic citation under s. 345.11 and personally serve it upon the
23 owner of the vehicle being operated in the commission of the violation of s. 346.67 (1),
24 346.68, or 346.69.

1 (b) If with reasonable diligence the owner specified in par. (a) cannot be served
2 under par. (a), service may be made by leaving a copy of the citation at the owner's
3 usual place of abode within this state in the presence of a competent member of the
4 family at least 14 years of age, who shall be informed of the contents thereof.

5 (c) If with reasonable diligence the owner specified in par. (a) cannot be served
6 under par. (a) or (b) or if the owner specified in par. (a) lives outside of the jurisdiction
7 of the issuing authority, service may be made by certified mail addressed to the
8 owner's last-known address.

9 (4) (a) Except as provided in par. (b), it shall be no defense to a violation of this
10 section that the owner was not operating the vehicle at the time of the violation.

11 (b) The following are defenses to a violation of this section:

12 1. That a report that the vehicle was stolen was given to a traffic officer before
13 the violation occurred or within a reasonable time after the violation occurred.

14 2. If the owner of the vehicle, including a lessee specified in subd. 3., or a person
15 on a trial run specified in subd. 4. provides a traffic officer with the name and address
16 of the person operating the vehicle at the time of the violation and the person so
17 named admits operating the vehicle at the time of the violation, then the person
18 operating the vehicle shall be charged under s. 346.67 (1), 346.68, or 346.69 and the
19 owner, including a lessee, or person on a trial run shall not be charged under this
20 section.

21 3. Subject to subd. 2., if the vehicle is owned by a lessor of vehicles and at the
22 time of the violation the vehicle was in the possession of a lessee, and the lessor
23 provides a traffic officer with the information required under s. 343.46 (3), then the
24 lessee and not the lessor shall be charged under this section.

4. Subject to subd. 2., if the vehicle is owned by a dealer as defined in s. 340.01 (11) (intro.) but including the persons specified in s. 340.01 (11) (a) to (d), and at the time of the violation the vehicle was being operated by any person on a trial run, and if the dealer provides a traffic officer with the name, address, and operator's license number of the person authorized to operate the vehicle on the trial run, then this person, and not the dealer, shall be charged under this section.

5. That another person has been convicted under s. 346.67 (1), 346.68, or 346.69 for the violation of s. 346.67 (1), 346.68, or 346.69 specified in sub. (1).

SECTION 3. 346.74 (6) of the statutes is created to read:

346.74 (6) (a) A vehicle owner or other person found liable under s. 346.675 with respect to a violation of s. 346.67 (1) may be required to forfeit not more than \$1,000.

(b) A vehicle owner or other person found liable under s. 346.675 with respect to a violation of s. 346.68 or 346.69 may be required to forfeit not more than \$100.

(c) Imposition of liability under s. 346.675 shall not result in suspension or revocation of a person's operating privilege under s. 343.30 or 343.31, nor shall it result in demerit points being recorded on a person's driving record under s. 343.32 (2) (a).

(END)

Northrop, Lori

From: Becher, Scott
Sent: Wednesday, December 21, 2005 12:09 PM
To: LRB.Legal
Subject: FW: Co-sponsorship – Hit & Run Legislation – LRB 3631

Attachments: 05-36311.pdf

Please jacket LRB 3631 . Thanks

Scott Becher
Rep. Wieckert

From: Rep.Wieckert
Sent: Wednesday, December 21, 2005 12:00 PM
To: *Legislative All Assembly; *Legislative All Senate
Subject: Co-sponsorship – Hit & Run Legislation – LRB 3631

TO: All Legislators

FROM: Rep. Steve Wieckert

DATE: December 21, 2005

RE: Co-sponsorship – Hit & Run Legislation – LRB 3631

This is a co-sponsorship memo regarding a vehicle owner's liability for failure to stop at the scene of an accident, or hit and runs.

Law enforcement officials have pointed out that hit & run accidents are an increasing problem around the state. They also report that many times there will be an eye witness to the accident, and that the eye witness will be able to identify the make, model, color, and maybe even the license plate of the vehicle, but many times they do not get a good look at the driver. The problem is that when law enforcement officers track down the vehicle and talk to the owner, many times the owner refuses to present any information and the investigation is stonewalled.

This legislation provides a tool for law enforcement officials to use that will encourage owners of vehicles to accurately report to law enforcement officials what happened and who was driving.

The bill is modeled after a number of other provisions that already exist in state law regarding owner liability. This bill allows the owner of the vehicle to have some liability for the accident unless the owner truthfully reports who was driving the vehicle if it was not the owner.

Owner liability is a concept already established in state statute, such as in:

- WSA 346.175 – Owner Liability for Fleeing an Officer
- WSA 346.452 – Owner Liability for Vehicle Illegally Crossing at Railroad Crossing
- WSA 346.465 – Owner Liability for Vehicle Illegally Crossing at a Controlled School Crossing
- WSA 346.485 – Owner Liability for Vehicle Illegally Passing a School Bus
- WSA 346.945 – Owner Liability for Radios and other Electric Sound Amplification Devices

Gary, Aaron

From: Gary, Aaron
Sent: Wednesday, December 28, 2005 9:57 AM
To: Becher, Scott
Subject: RE: LRB 05-3631/P1 attached as requested

Scott,

Per our conversation this morning, at p. 4, lines 14-20, the revised subdivision 2. would read as follows (the change is in italics):

"2. If the owner of the vehicle, including a lessee specified in subd. 3., or a person on a trial run specified in subd. 4. provides a traffic officer with the name and address of the person operating the vehicle at the time of the violation *and sufficient information for the officer to determine that probable cause does not exist to believe that the owner of the vehicle was operating the vehicle at the time of the violation*, then the person operating the vehicle shall be charged under s. 346.67 (1), 346.68, or 346.69 and the owner, including a lessee, or person on a trial run shall not be charged under this section."

As discussed by phone and as mentioned in the e-mail below, this is similar to current s. 346.175 (4) (b) in not requiring an "admission" from an operator that is not the owner. Does this provision work for you?

Also, to redraft, I will need the jacket back. Thanks. Aaron

Aaron R. Gary
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608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

1/5 H/c w/ Scott Becher
• make this change; sending jacket back

From: Gary, Aaron
Sent: Tuesday, December 13, 2005 5:45 PM
To: Becher, Scott
Subject: RE: LRB 05-3631/P1 attached as requested

Basically, I don't really agree with Mr. Palmer's third paragraph, and yet I do agree with him that it may be reasonable to not require an admission of the driver in order for the owner to avoid liability under this statute. The fact is that there are about 9 different owner liability statutes in existence in statutes now, and 7 of the 9 require such an admission by a 3rd person in order for the owner to avoid liability (unless the car is stolen or another exception applies). Nonetheless, I've always found this "admission" provision a little bit troubling myself. I note that owner liability for fleeing an officer is one of the 2 owner liability statutes that do **not** require such an admission.

Keep in mind that the bill establishes owner liability, which is a civil offense - the owner isn't charged with hit-and-run or subject to hit-and-run penalty - the owner is subject to a far less severe penalty than hit-and-run. So it's not like the owner is going to jail if the driver refuses to admit he was driving. I think the idea behind the "admission" requirement is to make sure that the owner can't simply deny that he was driving and to make sure that **somebody** is punished; without it, the owner may escape liability and the person who the owner allowed to driver his/her car and who then committed the hit and run may also escape liability. The "admission" requirement avoids this potential result. Nonetheless, as Mr. Palmer points out, although there is

12/28/2005

Gary, Aaron

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Sent: Tuesday, December 13, 2005 5:45 PM
To: Becher, Scott
Subject: RE: LRB 05-3631/P1 attached as requested

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Keep in mind that the bill establishes owner liability, which is a civil offense - the owner isn't charged with hit-and-run or subject to hit-and-run penalty - the owner is subject to a far less severe penalty than hit-and-run. So it's not like the owner is going to jail if the driver refuses to admit he was driving. I think the idea behind the "admission" requirement is to make sure that the owner can't simply deny that he was driving and to make sure that **somebody** is punished; without it, the owner may escape liability and the person who the owner allowed to driver his/her car and who then committed the hit and run may also escape liability. The "admission" requirement avoids this potential result. Nonetheless, as Mr. Palmer points out, although there is no 5th amendment right for the owner, with regard to hit-and-run, the 3rd person could have a 5th amendment privilege and other constitutional protections if the offense is severe enough to be criminal and may also have a huge incentive not to make the admission even if it puts his friend or family member, who loaned the car, on the hook, as the penalty for the driver is much higher than the penalty of the owner.

If you want the bill redrafted, I can replace this provision with something similar to the "fleeing an officer" statute, something like s. 346.175 (4) (b), which requires some verification of the owner's denial that he/she was operating the vehicle but no actual admission by the 3rd party.

Please let me know if you want changes made. Aaron

Aaron R. Gary
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6-3070
12/28 Hlc w/ Scott Becher } 3631/1
want redraft per this change
e-mail him the language

From: Becher, Scott
Sent: Tuesday, December 13, 2005 4:39 PM
To: Gary, Aaron
Subject: FW: LRB 05-3631/P1 attached as requested

Aaron-

What do you think?

Scott Becher
Rep. Wieckert

12/28/2005

From: James Palmer [mailto:palmer@wppa.com]
Sent: Tuesday, December 13, 2005 4:34 PM
To: Becher, Scott
Subject: Re: LRB 05-3631/P1 attached as requested

Scott:

Earlier today you will recall that we spoke regarding the bill referenced above, and that I indicated to you that we would not be able to offer any formal opinion on the bill until next week, at the earliest. You will further recall that I indicated some reservations about the bill's requirement that the named individual "admit" that he/she was driving a motor vehicle in a hit-and-run situation in order for the owner of the vehicle to have a defense.

After some additional thought, I would not recommend to the WPPA Legislative Committee that we support this bill as currently written. In my view, the bill should allow the owner of a vehicle to have a defense when THEY can prove that someone else was operating their vehicle. By creating such an affirmative defense, you put the onus of the owner of the motor vehicle to prove their defense, and you still succeed in establishing the default rule that the owner is liable.

By leaving the bill as currently written, you are not necessarily doing law enforcement any favors. People will exercise their constitutional right to remain silent, and in doing so, deny the owner of a motor vehicle the right to defend themselves against a hit-and-run charge when there may very well be strong evidence demonstrating otherwise.

Telephone me at your convenience to discuss this matter further.

Thank you.

Jim Palmer
Assistant Executive Director &
Director of Governmental Affairs

----- Original Message -----

From: Becher, Scott
To: palmer@wppa.com
Sent: Friday, December 09, 2005 1:35 PM
Subject: FW: LRB 05-3631/P1 attached as requested

From: Northrop, Lori
Sent: Friday, October 07, 2005 9:55 AM
To: Becher, Scott
Subject: LRB 05-3631/P1 attached as requested

Lori Northrop
Program Assistant
State of WI Legislative Reference Bureau
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Madison, WI, 53703
Phone 266-3561 fax 264-6948